

N9JJRAJS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 870 (JMF)

5 MUSTAPHA RAJI,

6 Sentence

7 Defendant.

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8 New York, N.Y.
9 September 19, 2023
10 2:30 p.m.

11 Before:

12 HON. JESSE M. FURMAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

JILAN KAMAL

17 CATHERINE E. GHOSH

ROBERT SOBELMAN

18 Assistant United States Attorneys

19 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

Attorneys for Defendant

20 BY: JEREMY SCHNEIDER

21 RACHEL PERILLO

22 Also Present:

23 Michael Ryan, FBI

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MS. KAMAL: Good afternoon, your Honor.

Jilan Kamal, Catherine Ghosh, and Rob Sobelman, on behalf of the United States. And with us is Agent Ryan from the FBI.

THE COURT: Good afternoon.

MR. SCHNEIDER: Good afternoon, your Honor.

Jeremy Schneider and Rachel Perillo, appearing for Mr. Raji. Good afternoon, sir.

THE COURT: Good afternoon. Welcome back, everyone.

We are finally here for purposes of sentencing. I realized earlier today that it was literally a year to the day that the verdict was returned in this case, so not exactly speedy, but here we are.

In connection with today's proceeding, I have reviewed the presentence report, dated April 24, 2023. I've also received and reviewed the following additional submissions: The defense submissions dated May 2 and September 13, as well as the attachments to those submissions, which include various letters addressed to me, including letters from Mr. Raji's sister and cousin, some charities, and other family members and the like; a birth certificate; some medical records and certificates from the Bureau of Prisons; and the government

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1 submissions dated May 9, May 15, and June 13 of this year.

2 First, have each of you received the other's
3 submissions? I guess most notably, has the government received
4 all of the defense submissions including the exhibits that were
5 filed with the request that they be sealed?

6 MS. KAMAL: Yes, your Honor.

7 THE COURT: And is there anything else that I should
8 have received, aside from what I just listed?

9 MR. SCHNEIDER: Your Honor, I think the government
10 submitted a letter on September 15.

11 THE COURT: Sorry. You're absolutely right.

12 MR. SCHNEIDER: I have seen that letter.

13 THE COURT: As did I. I apologize. I just omitted it
14 from the list. So I have also gotten that.

15 Anything aside from those?

16 MS. KAMAL: Not from the government, your Honor.

17 MR. SCHNEIDER: No, we're good, Judge. Thank you.

18 THE COURT: I have reviewed the defense exhibits and
19 agree that the medical exhibits and birth certificate should be
20 filed under seal also. I will file those under seal. In the
21 event of an appeal, they may be accessed by counsel on appeal
22 without further application to me, but otherwise will remain
23 under seal.

24 Can I confirm with the government that anyone entitled
25 to notice as a crime victim has been provided with notice of

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1 today's proceeding?

2 MS. KAMAL: Yes, your Honor. The victims are aware of
3 the proceedings.

4 THE COURT: Do you know if anyone wishes to be heard
5 on that score?

6 MS. KAMAL: No, your Honor. The victims all
7 participated in the trial, and they told me they would rest on
8 their representations and their testimony here.

9 THE COURT: All right. Very good.

10 Before I turn to sentencing, Mr. Schneider, I just
11 wanted to give you an opportunity to be heard with respect to
12 the government's letter of June 13, which noted that the
13 government had determined that there was an error in the jury
14 instructions, and expressed its view as to why that error
15 didn't have any legal significance here.

16 Did you wish to be heard on that?

17 MR. SCHNEIDER: I don't wish to be heard as to the
18 substance, but I think at the end of the sentence I will
19 probably ask to be relieved for the appeal. Generally, because
20 I think after trial it's good to have a fresh set of eyes, but,
21 specifically, because of that letter, it's obviously a mistake
22 that I made with the government regarding the instructions. I
23 think maybe there are other mistakes that I may have made that
24 the government didn't agree with or the government didn't make
25 your Honor aware of. So in terms of the substance of the

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1 June 13 letter, I have nothing to add to that, no.

2 THE COURT: All right. Very good. Understood.

3 And I guess we'll take that up at the conclusion. For
4 what it's worth, I agree with the government that the error –
5 and it does seem that it was an error – doesn't have effect
6 here, both because of the invited-error doctrine, but
7 substantively it also seems inconceivable to me that that error
8 could have any prejudice to Mr. Raji, since there was really
9 ample evidence of his own participation in the fraud scheme.
10 And, indeed, it would be hard to reconcile the jury's
11 conviction on the substantive count without that evidence, so
12 bottom line is I don't think it had any impact. But obviously
13 if it's raised on appeal, it will be up to the Court of Appeals
14 to determine.

15 Now, Mr. Schneider, have you reviewed the presentence
16 report?

17 MR. SCHNEIDER: I have, with Mr. Raji, yes.

18 THE COURT: And putting aside the guidelines for a
19 moment, I know you have some objections on that score. Any
20 objections or corrections to the factual recitation set forth
21 in the presentence report? And I recognize you're preserving
22 your objection to the factual description of the offense. I
23 think it accurately describes the record at trial, but I think
24 you're preserving the appellate issues on that score.

25 MR. SCHNEIDER: You said just what I was going to say,

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1 so I have nothing to add to that, Judge.

2 THE COURT: Mr. Raji, have you reviewed the
3 presentence report?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: All right. And did you discuss it with
6 Mr. Schneider?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: And did you have enough time to do that,
9 to go over the report with Mr. Schneider and to discuss with
10 him anything that you wish to bring to my attention in
11 connection with sentencing?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Ms. Kamal, have you reviewed the
14 presentence report?

15 MS. KAMAL: Yes, I have, your Honor.

16 THE COURT: Putting aside the guidelines for a moment,
17 any objections to its factual accuracy?

18 MS. KAMAL: No, your Honor.

19 THE COURT: All right. Hearing no objections, aside
20 from the preservation of Mr. Raji's appellate rights, I will
21 adopt the factual recitation set forth in the presentence
22 report, which will be made part of the record in this matter
23 and placed under seal. In the event that an appeal is taken,
24 counsel on appeal may have access to that sealed report without
25 further application to me.

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1 Now, turning to the guidelines, as counsel know, I'm
2 not bound by the guidelines, but I do have to consider the
3 applicable guidelines range in imposing a sentence, and that
4 requires me to accurately calculate that range. In this case,
5 the presentence report calculates the offense level as 33, the
6 criminal history category as I, and the corresponding
7 guidelines range is 135 to 168 months, with a supervised
8 release range of one to three years, and a fine range of 35 to
9 \$350,000.

10 And defendant has lodged three objections. I think
11 two are relatively easily resolved because the defense concedes
12 that they run contrary to the law of this circuit. First is to
13 the inclusion of relevant conduct and the loss amount, as the
14 defendant concedes that it runs contrary, not just to the
15 language of Section 1B1.3, but to the decisions of the Second
16 Circuit, including *United States v. Feldman*, which is cited on
17 page 3 of the defendant's sentencing submission.

18 And so, too, on the distinction between intended loss
19 and actual loss, as counsel acknowledges, runs contrary to the
20 law of the circuit, see page 5 of the defense brief, *United*
21 *States v. Lacey*. The Third Circuit decision is interesting,
22 the question is interesting in light of the Supreme Court's
23 decision in *Kisor*, but the bottom line is I'm bound by the
24 Second Circuit, and unless intervening decision of the Supreme
25 Court renders that prior precedent so clearly wrong that it

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1 would inevitably be overruled by the Second Circuit, I can't
2 say that here, if only because the Second Circuit has
3 reaffirmed the principle since *Kisor*, namely in *United States*
4 *v. Powell*, which is cited by the government in its most recent
5 submission.

6 I would also cite to Judge Liman's decision in a case
7 called *Taboada v. United States*, 2023 WL 2466595, in which he
8 approved the inclusion of intended loss in the loss calculation
9 and found that there was ambiguity that was clarified by the
10 application note. I'm not saying that's right or wrong, but
11 bottom line is I don't think the prior Second Circuit case law
12 is clearly wrong in light of *Kisor*, or given that it's up to
13 the Second Circuit to reevaluate its precedent, not up to me.
14 So bottom line is on both of those, I think I am bound to
15 reject the defense arguments and, therefore, do reject the
16 defense arguments.

17 The third issue, I think, is a closer call, and that
18 is whether a leadership enhancement is warranted, and I guess
19 I'll pose this question to the government. There's no question
20 in my mind that Mr. Raji played a more significant role than
21 Ms. Martino-Jean, and that is relevant to the 3553 analysis,
22 and I'll have more to say on that later. He clearly gave her
23 some instructions and directions with respect to moving the
24 money out of the account and what have you, but I'm not sure
25 that that necessarily makes him an organizer, leader, or

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1 manager of the conduct.

2 You stated in your letter several times that Mr. Raji
3 recruited Ms. Martino-Jean to the scheme, and I don't recall --
4 maybe there is evidence in the record to support that. Is
5 there support for that proposition as opposed to the text
6 exchanges in which Mr. Raji certainly is giving some
7 directions? But I'm not sure that that necessarily supports
8 the weight of the argument that you're making.

9 MS. KAMAL: May I have one moment, your Honor?

10 THE COURT: Yes.

11 MS. KAMAL: So your Honor, in terms of the evidence
12 that was put forward at trial, the Court is correct that for
13 our position we were relying on the text messages between
14 Mr. Raji and Ms. Martino-Jean in which he is telling her when
15 to expect money movements, telling her what to do with them,
16 and basically he is the one who is in contact with the -- let's
17 call them the ultimate principals of the scheme. The only
18 appropriate inference here is that he is the one who has
19 brought her into the scheme, otherwise how would she know and
20 how would she have become involved, if not at his direction?

21 The other evidence before the Court and at trial was
22 that the cooperator, Mr. Afolabi Adeusi, he explained that
23 Mr. Raji's role in these schemes, as he understood it, was
24 effectively as a broker of accounts. As we saw from the 404(b)
25 evidence, Mr. Raji occasionally used his own accounts, but he

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1 was also reaching out to others and bringing in others who had
2 accounts that could accept large amounts and move the money
3 quickly. Ms. Martino-Jean was just that, she both worked for a
4 law firm and she was a real estate agent. And in connection
5 with her other work, she had access to the type of accounts
6 that would be moving and accepting large quantities of money,
7 which is exactly what Mr. Raji was tasked with procuring for
8 the scheme.

9 So from our point of view, that is what supports the
10 inference here that he recruited her to the scheme, and he was
11 the one who was giving her direction.

12 THE COURT: All right. Mr. Schneider, do you wish to
13 be heard?

14 MR. SCHNEIDER: Yes. May I remain seated just so I
15 can read, Judge?

16 THE COURT: As long as you put the microphone down so
17 I can hear you.

18 MR. SCHNEIDER: Absolutely. Is that okay?

19 THE COURT: Yes.

20 MR. SCHNEIDER: Thank you, your Honor. Appreciate it.

21 Well, let's remember that Ms. Martino-Jean has already
22 pled guilty, and let's remember that in the government's own
23 sentencing submissions they painted her as someone who didn't
24 just make one mistake but acted in a calculated period of time
25 committing a course of crimes. Let's also remember that she

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1 was the one who got significantly more money than Mr. Raji.
2 She was the one who distributed large portions of the proceeds
3 to persons and entities with whom she was associated, including
4 \$700,000 of the fraud proceeds she used to pay off personal
5 debts where, according to the trial evidence, Mr. Raji only
6 received \$50,000 of the proceeds.

7 How can the person who was supposedly the leader in
8 charge, the recruiter, get a fraction of what the person who
9 was -- Ms. Martino-Jean, who supposedly did nothing? Remember,
10 again, she was the president of a company. She had signatory
11 powers, she had a debit card; Mr. Raji didn't. Mr. Raji didn't
12 have access to the accounts; Ms. Martino-Jean did. So it seems
13 to me that it's possible not only should Mr. Raji not get a
14 leadership, but the more I talk about it, I'm convincing myself
15 he should get a minor role.

16 THE COURT: I wouldn't push your luck.

17 MR. SCHNEIDER: That's why I'm not talking about that.
18 I understand.

19 I think it's a significant question, and I think the
20 government's answer that you can assume she was recruited is
21 speculation. Your Honor is right, the trial evidence did not
22 show that Mr. Raji recruited her. And even if he did
23 "recruit," put that in quotes, so let's say he brought her on
24 to help, but she then took a greater role. She's the one who
25 had much more decision-making authority. She's the one who got

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1 more money. She's the one who gave the money, distributed it.
2 So it seems to me that he should not get an enhancement.

3 THE COURT: Ms. Kamal?

4 MS. KAMAL: If I may be heard very briefly on that
5 point.

6 THE COURT: Sure. But in the course of that - I was
7 planning to ask you about this later, but may as well ask you
8 about it now - I think Mr. Schneider's point about
9 Ms. Martino-Jean getting the vast majority of the proceeds that
10 were not recovered is an interesting, if not significant, one.
11 One generally doesn't think of the manager as getting the small
12 slice and the worker getting the vast majority of the profits,
13 but at least on the trial record that seems to be the case
14 here.

15 MS. KAMAL: I take your point, your Honor. But I
16 think there's another concept that we're all familiar with that
17 does a lot of the explanatory work here, and that is there is
18 no honor among thieves.

19 To be sure, Ms. Martino-Jean took the vast majority of
20 the sum, but that was not the instruction she was given by
21 Mr. Raji. Mr. Raji was clearly horrified when he had to report
22 to the folks up the chain that the money they were waiting for
23 was apparently missing and that she had stopped communicating
24 with him. And so what we see in the text messages and what was
25 reflected in the evidence at trial is that Ms. Martino-Jean

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1 effectively went rogue.

2 She clearly took direction from Mr. Raji with respect
3 to what to do with the money, how it was to be disbursed and to
4 whom. She was, as we can, we think, properly infer from that
5 evidence, recruited to the scheme by him. But then at some
6 point she saw the opportunity in front of her, and she took the
7 lion's share for herself and attempted to effectively stonewall
8 and run away with the funds.

9 So while I take the Court's point and defense's point
10 that she ultimately wound up with more of the proceeds, that
11 was not intended, and that did not make her somehow have a
12 greater role in the scheme than Mr. Raji.

13 THE COURT: All right. I think it's a close question.
14 And I suspect that for appellate purposes, I could probably
15 infer in either direction, but I'm not going to apply the
16 enhancement. My speculation is that Mr. Raji was indeed
17 superior to Ms. Martino-Jean and directed her, if not recruited
18 her, but I don't think the evidence clearly supports that. I
19 don't think that inference is a necessary or mandatory one, and
20 I think it's undercut by evidence that she took the vast
21 majority of the criminal proceeds here.

22 Bottom line is, given his role, that he was sort of
23 the middleman broker. His role was to find the accounts and
24 essentially direct deposits and withdrawals from those
25 accounts. I think the text messages are as consistent with

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1 just him performing that role and doesn't necessarily mean that
2 he was giving direction, let alone exercising the kind of
3 discretion that characterizes a manager or supervisor.

4 So bottom line is I think the record is not
5 substantial enough to draw the inference that the government is
6 urging. I will not impose an enhancement for a leadership
7 role. That reduces the guidelines calculation by two. I
8 assume the government would concede, in light of that, that in
9 the event a zero-point offender amendment goes into effect,
10 that Mr. Raji would benefit from that as well; is that correct?

11 MS. KAMAL: That's correct, your Honor.

12 THE COURT: All right. So as I have in other cases,
13 and I assume without objection from the government since it has
14 taken that position in other cases, I will essentially treat
15 that amendment as if it was in effect today.

16 So as a technical legal matter, I find, using the
17 November 2021 edition of the guidelines which is still in
18 effect, that the offense level is 31, the criminal history
19 category is I, and the guidelines range is 108 to 135 months'
20 imprisonment, with a supervised release range of one to three
21 years, and a fine range of 30,000 to \$300,000. But as an
22 effective matter, I will treat the guidelines range and the
23 offense level as 29, and the corresponding guidelines range is
24 87 to 108 months.

25 Turning to departures, obviously there are 3553

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1 variances, but do either counsel believe that a departure
2 within the guideline system as distinct from what has come to
3 be known as a variance would be warranted here?

4 MS. KAMAL: No, your Honor.

5 THE COURT: Mr. Schneider?

6 MR. SCHNEIDER: No departures, your Honor.

7 THE COURT: I've nevertheless reviewed the record and
8 agree that there is no basis or ground for a departure, again,
9 as distinct from a variance.

10 With that, I'll turn first to the government and then
11 to Mr. Schneider and then to Mr. Raji, if he wishes to be heard
12 as to sentencing. Obviously I did preside over the trial. It
13 obviously was also a long time ago. I've also read your
14 lengthy sentencing submissions and you can assume that I'm
15 already familiar with what you are arguing there. So you don't
16 need to repeat anything you've already argued, but anything
17 that you think would be helpful to me, you certainly can
18 address.

19 I'll start with the government, and in the course of
20 whatever you have to say, I would like you to spend a little
21 more time on the relationship with Martino-Jean, not
22 necessarily on factually their relationship, but it seems a
23 little bit hard to sort of square a 78-month sentence, which is
24 what you're asking, with the six-month sentence that was
25 imposed on her, recognizing, I'm inclined to agree, that

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1 Mr. Raji is the more culpable of the two. Obviously his
2 criminal conduct here extended beyond the \$1.7 million Marble
3 Arch transaction. And there were the two similar schemes that
4 were presented at trial; there was the attempt, if you will,
5 after Ms. Martino-Jean. So I fully recognize and plan to take
6 into consideration those things, but even so, six months versus
7 what you're asking for seems like a pretty heavy distinction.

8 So Ms. Kamal?

9 MS. KAMAL: So your Honor, you've actually previewed
10 everything I was about to tell you.

11 So I guess where I will start, your Honor, here, is
12 relevant conduct. Ms. Martino-Jean is not alleged to have
13 participated in the other schemes that were presented to the
14 jury at trial. And as the Court is well aware, Mr. Raji
15 orchestrated and received the vast amount of the proceeds from
16 two other similar such phishing schemes that targeted a
17 hospital system and a public university.

18 Not only did the nature of the victims here warrant a
19 more severe punishment, but the pattern, your Honor, just
20 simply illustrates that this instance, the Marble Arch scheme,
21 was not a one-off. It was not an act of desperation. This is,
22 in fact, how Mr. Raji has supported himself for years. And we
23 think of the text messages that were introduced at trial, in
24 particular the text messages with the cooperating witness,
25 Mr. Adeusi, who reached out to the defendant after the Marble

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1 Arch scheme had been uncovered and after the defendant was well
2 aware that this was obviously a fraudulent scheme, if he could
3 have even plausibly claimed that it wasn't before, and he
4 clearly wanted back in. He was going to do it again.

5 Your Honor, there was no such evidence against Nancy
6 Martino-Jean, and, accordingly, the guidelines for Mr. Raji
7 include that relevant conduct which increased the loss amounts
8 from 1.9 million up to 3.9 million. And so we think that is a
9 substantial consideration for the Court, and it warrants a
10 substantial sentence.

11 The second thing I would note is that Ms. Martino-Jean
12 also accepted responsibility. She accepted responsibility
13 early and quickly, and that not only spared the government
14 resources, but it also reflects on the fact that this was not,
15 in fact, Ms. Martino-Jean's livelihood. As I mentioned to the
16 Court, the government was aware at the time Ms. Martino-Jean
17 was charged and from the evidence that was seized in the course
18 of the investigation that she, in fact, did have other gainful
19 employment, legitimate employment.

20 Notwithstanding the nonprofits and the development
21 work that Mr. Raji points to, his purported development work
22 and the entities through which he purports to have done it have
23 never filed taxes, and the government was able to determine no
24 legitimate work ever done by him, at least in this country.
25 And so for that reason, your Honor, we think there's a stark

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1 distinction in the 3553(a) factors between these two
2 defendants.

3 Last but not least, your Honor, the government has
4 tried to be very reasonable in its consideration of what would
5 be an appropriate sentence for Mr. Raji. So the government has
6 not simply come in here and unthinkingly requested a guideline
7 sentence. The guidelines range here is very high. The
8 government and the defendant went to trial. The government
9 nevertheless sat down, took seriously the factors such as the
10 defendant's health and the support from his family and his
11 other factors, and we have concluded, based on our
12 investigation and the evidence that was put before the jury,
13 that this is the reasonable sentence for a defendant who,
14 notwithstanding his other excellent qualities, I'm sure, as a
15 person, has nevertheless engaged in these types of serial
16 frauds for years and that have bilked victims of millions of
17 dollars. And so we really think that a substantial sentence
18 here is warranted, notwithstanding the lesser sentence that
19 Ms. Martino-Jean received.

20 THE COURT: And could I actually ask you to elaborate
21 on one thing you touched upon, which is, in your sentencing
22 submission there's a footnote that I would say casts some doubt
23 on the defendant's claims or representations with respect to
24 his work history. Can you just elaborate on that? You touched
25 briefly on it a moment ago, but other than the fact that he

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1 didn't file any taxes – and that's not an insignificant fact –
2 can you tell me what ground you have, if any, to doubt that he
3 has that work history or history of charitable involvement?

4 MS. KAMAL: Can I have one moment, your Honor?

5 So your Honor, by pointing to the evidence of the lack
6 of any tax records here, what the government is really pointing
7 to, and what I can provide a little more color on, is the fact
8 that these entities were effectively shell entities. The
9 government was unable to identify any operations, any
10 donations, any employees, any legitimate activities that were
11 undertaken by the two Emergent entities that Mr. Raji cites in
12 his submission. And so, as far as the government can tell,
13 Mr. Raji had no other source of employment and engaged in no
14 other activity other than these particular schemes.

15 THE COURT: And correct me if I'm wrong, but I think
16 the two other fraud schemes proved at trial did involve
17 transfers to the Emergent entity; is that correct?

18 MS. KAMAL: That's correct, your Honor.

19 THE COURT: And a final question just as a
20 housekeeping matter, your submission indicated that you were
21 trying to reach agreement on forfeiture and restitution. I
22 think I then got proposed orders on both and with electronic
23 signatures from Mr. Schneider and Mr. Raji. Is it your
24 understanding – I'll confirm with Mr. Schneider – that that is
25 agreed upon?

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1 MS. KAMAL: Yes, your Honor.

2 THE COURT: Mr. Schneider, first, just to get that out
3 of the way, is that correct? Can I sign the proposed orders of
4 forfeiture and restitution and did you sign them and did your
5 client sign them?

6 MR. SCHNEIDER: Yes, your Honor. Yes, I was about to
7 mention that in a few minutes. So the answer is yes. I've
8 discussed with Mr. Raji the restitution order or the proposed
9 restitution order, and he authorized me to sign it on his
10 behalf.

11 THE COURT: All right. And as to sentencing, you may
12 proceed.

13 MR. SCHNEIDER: Thank you, your Honor.

14 You know, as a lawyer, it's kind of difficult to talk
15 about acceptance of responsibility after trial on behalf of a
16 client because, as your Honor knows full well, there's going to
17 be an appeal, and so therefore it would not be wise for me to
18 advise him to make a statement. But be that as it may, and we
19 said it in our written submission and I'll say it again,
20 Mr. Raji has accepted the jury verdict. We can disagree with
21 it, but he has accepted it. He made no attempts to either
22 intimidate witnesses either during trial or after trial
23 regarding sentences. He didn't testify in any manner that
24 would indicate that he was trying to obstruct justice.

25 And I'm not going to go into the details again, but

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1 his medical condition is something that can't be ignored and,
2 in fact, has worsened over time since he's been in. He went
3 from stage 3 to stage 4 chronic kidney, heart issues, etc.
4 That's all been documented in our submission. I'll not go into
5 the details about that again.

6 Now, in an attempt to kind of mitigate that, the
7 government has filed a letter indicating that the BOP says, "No
8 problem, we can handle it. We have medical facilities. We
9 have different units within different facilities. We can
10 handle it." But I guess my question to your Honor is what else
11 are they going to say? Are they going to say, "We can't
12 handle -- " and the fact is your Honor has been doing this a
13 long time. I have. They've never said they couldn't handle a
14 situation. But we all know that what they say and what they're
15 actually capable of doing in terms of this serious medical
16 situation is not entirely accurate.

17 We all have anecdotal evidence about people not
18 getting the treatment that they need. In fact, one of the
19 reasons your Honor let Mr. Raji out on bail after he'd been in
20 for a number of months was during COVID and the harsh
21 conditions and the fact he wasn't receiving appropriate medical
22 care. And your Honor let him out, and how did Mr. Raji
23 respond? He responded by not getting into any trouble at all.
24 So in terms of his medical conditions, that's a real problem.
25 He was on home incarceration for about seven months. He's now

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1 been in custody for about 20 months in MDC, which as we all
2 know, is under extreme harsh conditions, not just with COVID,
3 but with the lockdowns and all the problems MDC is having, and
4 as your Honor knows and has in the past given consideration to
5 those harsh conditions at the time of some sentences.

6 Your Honor asked the government about
7 Ms. Martino-Jean's sentence of time served. Well, okay, they
8 drew a distinction, but let's remember her guidelines were 33
9 to 41, okay? And Mr. Raji's guidelines are more than two to
10 three times that, depending on how you look at it. So I think
11 that what we're asking for, time served, sounds like it's
12 nothing, but it's almost a two-or-three-year sentence, given
13 the fact of already what he's been exposed to on home
14 incarceration and exposed to in the harsh conditions for at
15 least 20 months at MDC.

16 Let's also remember that he's going to be deported,
17 okay? So whatever sentence your Honor gives him and whatever
18 conditions BOP can try to help, regardless of what his
19 conditions are, once he's done, he's being deported. So your
20 Honor, I would ask for you to give a sentence which we ask for,
21 time served. Or if that kind of sounds worse than it is in
22 terms of the Court feels like it sounds too lenient, I would
23 ask you to give him a sentence of 24 months, because I think
24 that would take into consideration the harsh conditions and his
25 medical condition specifically, as well as also Martino-Jean's

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1 sentence and the comparable sentences imposed on people who are
2 similarly situated.

3 Thank you, your Honor.

4 THE COURT: Do you want to say anything in connection
5 with the employment record issue or simply rest on that?

6 MR. SCHNEIDER: No.

7 THE COURT: Okay. Mr. Raji, Mr. Schneider suggested
8 that you might choose not to make a statement, but this is your
9 opportunity. If there is anything you wish to say before I
10 sentence you, this is your opportunity to do so. Do you wish
11 to say anything?

12 THE DEFENDANT: No, thank you.

13 THE COURT: All right. Counsel, is there any reason
14 why sentence should not be imposed at this time?

15 MS. KAMAL: No, your Honor.

16 MR. SCHNEIDER: No.

17 I did forget one thing - I'm sorry - because you got
18 me sidetracked. You asked me the restitution question when I
19 wasn't ready for it.

20 I did want to point out one of the reasons Mr. Raji
21 agreed to have the restitution order, even though I told him it
22 may not be a great idea, because what happens if the case gets
23 reversed on appeal? Then he has this restitution order. He
24 acknowledged that he should sign as a way of acknowledging his
25 responsibility. So I wanted that to be included. While he's

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1 not prepared to accept responsibility on the record, I think
2 his signing of the restitution or his authorizing me to consent
3 to the restitution order is a view towards acceptance of some
4 sort of responsibility, your Honor.

5 And I'm sorry I interrupted you.

6 THE COURT: No worries.

7 All right. In imposing sentence, I'm required to
8 consider the factors set forth in 18, U.S. Code, Section
9 3553(a). They include, first, the nature and circumstance of
10 the offense and the history and characteristics of the
11 defendant; second, the need for the sentence imposed to advance
12 the purposes of sentencing, namely, to reflect the seriousness
13 of the offense, to promote respect for the law and to provide
14 just punishment for the offense, to afford adequate deterrence
15 to criminal conduct, to protect the public from further crimes
16 of the defendant, and to provide the defendant with needed
17 education or vocational training, medical care, or other
18 correctional treatment in the most effective manner; third, the
19 kinds of sentences available; fourth, the guidelines range,
20 which I have found to be 108 to 135 months, but 87 to 108 with
21 the benefit of the forthcoming likely amendment; fifth, any
22 pertinent policy statement; sixth, the need to avoid
23 unwarranted sentencing disparities; and, seventh, the need to
24 provide restitution to any victims of the offense. Ultimately,
25 I'm required to impose a sentence that is sufficient, but no

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1 greater than necessary, to comply with the purposes of
2 sentencing that I mentioned a moment ago.

3 Now, let me say that in the abstract, in a vacuum, I
4 think a substantial sentence here is certainly warranted. The
5 crimes here are serious ones. We heard testimony from the
6 stand from not one, but three victims of Mr. Raji's crimes, two
7 obviously relevant conduct, but be that as it may, three
8 victims of serious and sophisticated fraud schemes revealing
9 that Mr. Raji was intimately involved over a long period of
10 time in defrauding people of significant sums of money, and
11 also presumably causing them great anxiety and heartache and
12 trying to figure out the vulnerabilities of their information
13 technology systems and other such things.

14 It is certainly quite concerning. The conduct and the
15 fact that it spanned the amount of time and the number of
16 victims that we know of is itself concerning. Even more
17 concerning is Mr. Raji's apparent willingness to continue that
18 conduct, even after the arrest of Ms. Martino-Jean. And I'm
19 referencing what Ms. Kamal was discussing earlier with respect
20 to the cooperator's approach to Mr. Raji. Bottom line is I
21 think a substantial sentence is certainly warranted for that
22 conduct.

23 The need for deterrence is high because many people
24 who are involved in these schemes, certainly the collaborators
25 who are presumably not in the United States, are not often or

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1 frequently or likely to be caught, so I think a significant
2 sentence is warranted in the abstract.

3 Having said that, we're not in the abstract or in a
4 vacuum here, and I think there are reasons, and the
5 government's position on sentencing reflects those reasons, to
6 justify a below-guidelines sentence. One is that conditions of
7 confinement to date – I'm not sure the government acknowledges
8 those, but I have said before and repeat here that the
9 conditions of confinement, most significantly in 2020 when
10 Mr. Raji was in custody at the MCC, but even over the last year
11 that he's been in custody, are harsher conditions than I think
12 pretrial detainees or presentence detainees ought to be
13 enduring. That means a lot of solitary confinement, effective,
14 if not literal.

15 Back in 2020, being in jail while the pandemic was
16 raging in New York was really not a place that you would want
17 to be, and the conditions were certainly, understandably from
18 the Bureau of Prisons standpoint, but nevertheless from a
19 detainee standpoint, incredibly harsh relative to what
20 conditions should or could be. So I think that is a
21 significant factor, and as I said elsewhere or other judges
22 have said, one day under those conditions is equivalent to
23 something more than one day under other conditions.

24 Even more significant is Mr. Raji's serious medical
25 conditions, and the government does not dispute them and,

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1 indeed, I think acknowledges that they justify a
2 below-guidelines sentence. I think that is true for two
3 reasons. One is I imagine that conditions of confinement are
4 even more difficult to endure for somebody in Mr. Raji's
5 condition, certainly at the MCC and the MDC. I trust that that
6 is the case even at a designated facility that's more equipped
7 to handle Mr. Raji's conditions. I suspect it's fair to say
8 and is fair to infer that his conditions will make that time
9 more difficult to endure. But second is, just as I do not
10 doubt that the Bureau of Prisons has the capacity to care for
11 Mr. Raji, but there's no question that he will not get as good
12 quality care in custody as he would out.

13 Now, I think, but for that last reason, I would think
14 the appropriate sentence here would be in the neighborhood of
15 48 to 60 months. In light of that reason, however, I'm going
16 to impose a lower sentence.

17 I should say, lastly, I think the sentence imposed on
18 Ms. Martino-Jean does pose an issue here that needs to be
19 considered, which is to say that, to the extent that she's the
20 only other participant in this particular fraud scheme who
21 hasn't cooperated herself, the only other participant who has
22 been convicted and sentenced, the fact that she received a
23 sentence of only six or so months is hard to reconcile with a
24 much more severe sentence on Mr. Raji.

25 I, as I intimated earlier, absolutely firmly believe

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1 that Mr. Raji was a more significant player, as reflected in
2 the fact that he participated in not one but at least three
3 fraud schemes, as reflected in the fact that he was willing and
4 able to continue to participate in fraud schemes, and given the
5 nature of his role. But be that as it may, that's still a
6 large disparity. I recognize the government has cited several
7 cases involving similar conduct where defendants received
8 substantial sentences, and it's for that reason that I'm not
9 inclined to go as low as Mr. Schneider suggests, but I do think
10 that ensuring that there are no unwarranted disparities is a
11 relevant consideration here as well.

12 All that said, I will state the sentence that I intend
13 to impose and would ask you, Mr. Raji, if you're able, to
14 please rise at this time.

15 Mr. Raji, it is the judgment of this Court that you
16 are remanded to the custody of the Bureau of Prisons for a
17 period of 36 months, that is three years, on each count to be
18 served concurrently, to be followed by a period of three years
19 of supervised release.

20 During your term of supervised release, I certainly
21 expect you may be removed from the United States, and in that
22 regard it may be academic. But during your term of supervised
23 release, you will be subject to the mandatory conditions set
24 forth on page 22 of the presentence report, including the fact
25 that you shall satisfy your financial obligations that I will

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1 discuss shortly.

2 In addition, the standard conditions of supervised
3 release, which are set forth on pages 22 to 24 of the
4 presentence report and will be set forth in the judgment, shall
5 apply. And you must meet the special conditions set forth on
6 page 24, including the search condition, providing the
7 probation officer with access to any requested financial
8 information, not incurring any new credit charges or opening
9 additional lines of credit, and you shall obey the immigration
10 laws and comply with the directives of immigration authorities.
11 And you shall be supervised in the district of your residence.

12 I do want to make clear that I would have imposed the
13 same sentence, even if the guidelines -- the definition of loss
14 included only actual loss. I would disagree with that view of
15 relevant conduct here because I think that somebody who tries
16 to and intends to steal \$1.7 million is more culpable than
17 somebody who steals only 700,000, and to treat someone who
18 fortuitously, because of the intervention of banks or credit
19 cards or whatever the case may be ends up yielding only
20 \$700,000 shouldn't be treated the same as the latter. So for
21 that reason, even if the Third Circuit's view ultimately
22 prevails on that issue, I would impose the same sentence.

23 I will not impose a fine because I find that Mr. Raji
24 would not be able to pay a fine, and it would likely interfere
25 with his restitution payments. In accordance with the consent

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1 order of restitution, I will order Mr. Raji to pay \$711,557.54
2 in restitution to the victims set forth in the attached
3 schedule, which will be filed under seal. That is in
4 accordance with the terms of that order, so it is joint and
5 several with Nancy Martino-Jean and Afolabi Adeusi. In
6 addition, I will impose a mandatory special assessment of \$100
7 per count, for a total \$400, which shall be due and payable
8 immediately. And finally, as reflected in the consent order of
9 forfeiture, I order you, Mr. Raji, to pay forfeiture in the
10 same amount, \$711,557.54 in United States currency in
11 accordance with the terms and conditions set forth in the
12 order.

13 Does either counsel know of any legal reason why the
14 sentence that I have stated should not be imposed?

15 MS. KAMAL: No, your Honor.

16 Although I do want to clarify the record very briefly
17 after the Court imposes sentence.

18 MR. SCHNEIDER: I'm sorry. I couldn't hear.

19 MS. KAMAL: No. I have no objection to the sentence
20 as set forth by the Court, but I do want to correct the record
21 on one point before we adjourn.

22 THE COURT: Why don't you do that now in case it does
23 matter with respect to the sentence.

24 MS. KAMAL: I don't think it will affect the sentence,
25 your Honor.

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1 You asked the government whether or not we had
2 contacted all of the victims in advance of sentencing. I know
3 that contact was made with both of the Marble Arch victims. To
4 the extent that the 404(b) victims are not entitled to
5 restitution because the conduct that affected them was
6 uncharged, they were not contacted, to my knowledge and to the
7 knowledge of the other folks at this table. I wanted to make
8 that clear to the Court.

9 THE COURT: Thank you. I'm not sure they technically
10 qualify as crime victims under the Crime Victims' Rights Act,
11 therefore, I'm not sure they're entitled to notice.

12 MS. KAMAL: I agree, your Honor. I didn't want to
13 leave a false impression with the Court.

14 THE COURT: Thank you. I appreciate that.

15 Mr. Schneider, are you aware of any legal reason why
16 the sentence should not be imposed as stated?

17 MR. SCHNEIDER: No, sir.

18 THE COURT: Sentence as stated is imposed.

19 Mr. Raji, you may be seated if you like.

20 I find that the sentence is sufficient, but no greater
21 than necessary, to satisfy the sentencing purposes set forth in
22 Section 3553(a)(2), including the need to promote respect for
23 the law, to provide just punishment for the offense, to afford
24 adequate deterrence both to Mr. Raji and others, and to protect
25 the public from further crimes of the defendant.

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1 Mr. Raji, I certainly hope that, your health issues
2 notwithstanding, that you're able to serve your sentence
3 without serious problem and that you get out. And whenever you
4 get out, wherever you end up – and I suspect it will not be in
5 the United States – I want you, first of all, that if you're
6 removed from the United States, you may not come back to the
7 United States, and if you do and you do so during your term of
8 supervised release, that this is both a violation of supervised
9 release and also a new crime for which you may be punished.

10 Second, I don't know if your work history is valid or
11 not valid. I have my doubts, given the conduct proved at
12 trial, but be that as it may, I hope that the conduct that was
13 on display at trial is something that you put behind you and
14 that you use your talents – and I do not doubt that you have
15 real talents – to good use, to positive use, that you support
16 people like your cousin or niece or whoever it is who you've
17 adopted in some sense of the word, that you do that and support
18 your family in a way that is law abiding and not in a way that
19 you did in connection with trial.

20 All that is to stay I hope that this conduct does not
21 come to define you, and that you prove to be a better person
22 who does good in the world, not the kind of harm that you did
23 that we saw at trial.

24 Mr. Schneider, I would assume that you would ask me to
25 recommend a designation to an appropriate medical facility.

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1 MR. SCHNEIDER: Yes.

2 THE COURT: Any particular one or any particular
3 geographic area? I assume either Butner or --

4 MR. SCHNEIDER: Preferably a medical facility near
5 Florida where Mr. Raji was living.

6 THE COURT: Do you know if there is one? I know
7 Butner is in the Carolinas.

8 MR. SCHNEIDER: I would suggest Butner in North
9 Carolina, yes, please.

10 THE COURT: Why don't I specify that I think the most
11 significant matter is an appropriate medical facility or an
12 appropriate facility, given his serious medical conditions, and
13 secondarily, that he would like to be in a location as close to
14 Florida as possible. I'll make that recommendation.

15 I don't think there are any open counts, unless there
16 is an underlying indictment.

17 MS. KAMAL: No, your Honor, no open counts.

18 THE COURT: Mr. Raji, let me say a couple things: I
19 understand that you're preserving your right to appeal, and for
20 that reason are accepting only so much responsibility, but the
21 fact of the matter is I think the evidence at trial was
22 overwhelming of your guilt, and in that regard you do stand in
23 significant contrast to Ms. Martino-Jean, who accepted
24 responsibility for her conduct and didn't put the government
25 through its paces and go to trial.

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1 I hope that you learn a valuable lesson from this, and
2 I hope that when you come out, as I said, that you put yourself
3 to positive and law-abiding purposes, not the purposes that we
4 saw at trial. I assure you that if you don't and if you end up
5 back before me for a violation of supervised release, let alone
6 a new crime, that having given you a significant break on the
7 guidelines that you were facing, that you will not find me so
8 merciful, and I will not necessarily give you the benefit of
9 the doubt with respect to your health or otherwise. So I want
10 you to understand that and understand what's at stake and
11 hopefully put this behind you, but only in a valuable way that
12 involves learning a lesson from it.

13 You do have the right to appeal your conviction and
14 sentence, and any notice of appeal must be filed within 14 days
15 of entry of the judgment of conviction. If you cannot afford
16 to pay the cost of an appeal, you may apply for leave to appeal
17 *in forma pauperis*.

18 Mr. Schneider, you had suggested that you would plan
19 to request permission to withdraw. I'm inclined to think that
20 you can and should raise that with the Court of Appeals to
21 ensure he gets new counsel for the purposes of an appeal. I
22 guess all that is to say I could direct you to file a notice of
23 appeal on his behalf and then make an application to withdraw
24 before the Court of Appeals so they find somebody from the
25 appellate CJA panel who can represent Mr. Raji. Is that okay?

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1 MR. SCHNEIDER: Understood. And yes, it's absolutely
2 okay. And I'm going to speak to Mr. Raji for a couple of
3 minutes about whether he even wants to file a notice of appeal.
4 But if he does, I will file it on his behalf, one hundred
5 percent.

6 THE COURT: It might be that the prudent thing is to
7 file it, given the issues that you alluded to earlier, your
8 role at trial, to file one if only as a protective measure, and
9 then with new counsel he can discuss with that counsel whether
10 to withdraw the notice. That might be the more prudent course
11 here, but I'll leave that to you to discuss with Mr. Raji.

12 MR. SCHNEIDER: I totally understand, and I appreciate
13 the — I won't say advice because you can't give me advice, but
14 the comment.

15 THE COURT: Admonition, I think.

16 Anything else from the government?

17 MS. KAMAL: No, your Honor.

18 THE COURT: Mr. Schneider?

19 MR. SCHNEIDER: No, your Honor. Thank you very much.

20 THE COURT: All right. It is good to bring this
21 finally to conclusion. And with that, we are adjourned.

22 Thank you very much.

23 (Adjourned)
24
25